

UNITED STATES DISTRICT COURT  
for the

Western District of North Carolina

United States of America	)	
v.	)	
Audrey Gabriel	)	Case No: <u>3:05CR104-25</u>
	)	USM No: <u>20253-058</u>
Date of Previous Judgment: <u>04/24/2007</u>	)	<u>Tanzania C. Cannon-Eckerle</u>
(Use Date of Last Amended Judgment if Applicable)	)	Defendant's Attorney

**Order Regarding Motion for Sentence Reduction Pursuant to 18 U.S.C. § 3582(c)(2)**

Upon motion of ☒ the defendant ☐ the Director of the Bureau of Prisons ☐ the court under 18 U.S.C. § 3582(c)(2) for a reduction in the term of imprisonment imposed based on a guideline sentencing range that has subsequently been lowered and made retroactive by the United States Sentencing Commission pursuant to 28 U.S.C. § 994(u), and having considered such motion,

**IT IS ORDERED** that the motion is:

☒ DENIED. ☐ GRANTED and the defendant's previously imposed sentence of imprisonment (as reflected in the last judgment issued) of \_\_\_\_\_ months **is reduced to** \_\_\_\_\_.

**I. COURT DETERMINATION OF GUIDELINE RANGE** (Prior to Any Departures)

Previous Offense Level: <u>25</u>	Amended Offense Level: <u>23</u>
Criminal History Category: <u>III</u>	Criminal History Category: <u>III</u>
Previous Guideline Range: <u>120</u> to <u>120</u> months	Amended Guideline Range: <u>120</u> to <u>120</u> months

**II. SENTENCE RELATIVE TO AMENDED GUIDELINE RANGE**

- ☐ The reduced sentence is within the amended guideline range.
- ☐ The previous term of imprisonment imposed was less than the guideline range applicable to the defendant at the time of sentencing as a result of a departure or Rule 35 reduction, and the reduced sentence is comparably less than the amended guideline range.
- ☒ Other (explain): No reduction is authorized because Defendant's original sentence was "based on" a departure from the statutory mandatory minimum and not on a sentencing range lowered by Amendment 706. See United States v. Hood, --- F.3d ---, 2009 WL 416979 (4<sup>th</sup> Cir. Feb. 20, 2009).

**III. ADDITIONAL COMMENTS**

Except as provided above, all provisions of the judgment dated 04/24/2007 shall remain in effect.

**IT IS SO ORDERED.**

Order Date: February 24, 2009

Effective Date: \_\_\_\_\_  
(if different from order date)

  
\_\_\_\_\_  
Frank D. Whitney  
United States District Judge

